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Honorable Joan M. Azrack, U.S.D.J.
United States District Court: Eastern District
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Lepper v. Village of Babylon, et al.
Case No.: 2:18-CV-07011
Our File No.: PDG/EPT 148530-752

Dear Honorable Judge Azrack:

In reply to plaintiffs' counsel's letter of December 18, which recites the pending applications before this Honorable Court, we do not agree that discovery on liability and damages cannot be finalized. Plaintiffs in short summary attempt to characterize the nature of the motions or frame the issue before this Honorable Court. While we agree that the motions should be addressed by this Honorable Court, the motions have been briefed, speak for themselves and the arguments on the motion to dismiss the complaint are laid out for consideration before this Honorable Court.

Plaintiffs' counsel's reference to a code section regarding a playground or gym under ninety square feet is not applicable as explained in the motion to dismiss. Nonetheless, we ascertained during the inspection of the tree house that plaintiffs' alleged measurements were inaccurate. We can submit an affidavit by professional engineer Mr. Danatzko explaining that the

dimension of the tree house exceeds ninety square feet, and plaintiffs' allegations that the tree house is under ninety square feet are incorrect, rendering the subject tree house subject to the permit requirement even if plaintiffs seek to rely on that section of the code.

Despite the implication in plaintiffs' counsel's letter of December 18, the statement and calculations offered by Mr. Brown in discussing a temporary stay pending this litigation was not an expert report/exchange. We reiterate our request for a virtual conference by this Honorable Court to discuss a schedule for outstanding discovery.

Respectfully submitted,

KELLY, RODE & KELLY, LLP

BY: Eric P. Tosca
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EPT:jl